IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 32461 of 2006(M)

PETITIONER:

DR. BEENA USMAN,
W/O. IBRAHIM SHARAFUDHEEN, AGED 51 YEARS,
LECTURER, GOVT. HOMOEOPATHIC MEDICAL COLLEGE,
TRIVANDRUM.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:

---

1. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
HEALTH & FAMILY WELFARE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE PRINCIPAL AND CONTROLLING OFFICER,
GOVERNMENT HOMOEOPATHIC MEDICAL COLLEGE,
THIRUVANANTHAPURAM.

3. SRI. K.N.VENUGOPALAN,
LECTURER, (READER IN THE DEPARTMENT OF
PHYSIOLOGY & BIOCHEMISTRY),
GOVERNMENT HOMOEOPATHIC MEDICAL COLLEGE,
THIRUVANANTHAPURAM.

BY ADV. SRI.K.JAJU BABU - R3
GOVERNMENT PLEADER SRI.T.T.MUHAMOOD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

EXT.P1: TRUE COPY OF ORDER DT. 17/1/2005 OF R2.

EXT.P2: TRUE COPY OF NOTIFICATION DT. 25/5/2005.

EXT.P3: TRUE COPY OF GOVT. ORDER DT. 15/11/2005.

EXT.P4: TRUE COPY OF ORDER DT. 7/11/2005.

EXT.P5: TRUE COPY OF ORDER DT. 2/3/2006.

EXT.P6: TRUE COOPY OF REQUEST OF PETR. DT. 13/1/2006.

EXT.P7: TRUE COPY OF ORDER DT. 1/6/2006.

EXT.P8: TRUE COPY OF ORDER DT. 7/12/1991.

EXT.P9: TRUE COPY OF JUDGMENT IN WP.16051/2006 DT. 4/8/2006.

EXT.P10: TRUE COPY OF ORDER DT. 24/11/2006.

EXT.P11: TRUE COPY OF RELEVANT PAGES OF ORDER OF R2 DT. 8/67/99.

RESPONDENTS' EXHIBITS:

EXT.R3(A): TRUE COPY OF ORDER DT. 4/6/2005.

EXT.R3(B): TRUE COPY OF LETTER DT. 25/3/2006.

EXT.R3(C): TRUE COPYF OF REQUEST SUBMITTED BY R3.

EXT.R3(D): TRUE COPY OF FINAL SENIORITY LIST AS ON 31/12/2001.

EXT.R3(E): TRUE COOPY OF GOVT. ORDR DT. 14/8/97.

EXT.R3(F): TRUE COPY OF GOVT. ORDER DT. 24/8/06.

A.K. Basheer, J.

**- - - -

Rule 28(B) of the KS & SSR, as requested by her.

3. Petitioner has further prayed for issue of a direction to respondent No.1 to grant promotion to her to the post of Reader with effect from January 13, 2006 with all attendant benefits including pay and allowances and seniority. She further prays for a declaration that she is entitled to be treated as senior to respondent No.3 in the post of Reader.

4. It is contended by the petitioner that respondent No.3 ought not to have been allowed to rejoin duty as Reader since he had relinquished promotion to the above post when it was offered to him in June 2005. The case of the petitioner is that after relinquishment of promotion by respondent No.3, she had become eligible for promotion to the post of Reader when her probation as Lecturer was declared on January 13, 2006. She had completed 7 years of service as Lecturer by that time and thus she had become fully eligible for promotion as Reader. Therefore she had made a request to promote her. But the request was not considered favourably. Shortly thereafter the Principal had allowed respondent No.3 to join duty as Reader in the vacancy

which had still remained unfilled from June 2005. Respondent No.3 had joined duty as Reader provisionally on the basis of Ext.P7 order dated June 1, 2006 issued by the Principal.

5. It is contended by the learned counsel for the petitioner that the Department was not justified in refusing to promote the petitioner as Reader and also in allowing the post to lie vacant for a year. Petitioner had challenged Ext.P7 order in W.P.No.16051/2006. This Court had disposed of the said writ petition, as requested by the petitioner, with a direction to respondent No.1 to convene the meeting of the Departmental Promotion Committee if it was due, in the light of Rule 28(B) of the KS & SSR. Pursuant to the above direction contained in Ext.P9 judgment, the Government had issued Ext.P10 communication informing the petitioner that no vacancy of Reader existed in the Department at present, and since such a vacancy was not likely to arise in the near future, the DPC was not due to be convened.

6. In the counter affidavit filed on behalf of respondent No.1 it is stated that the post of Reader is a selection post. Merit alone will have

to be counted in addition to seniority. Petitioner being junior to respondent No.3, her request for promotion could not have been considered. The mere fact that probation of the petitioner in the category of Lecturer had been declared, will not entitle her to seek promotion to the post of Reader as of right. A select list will be prepared from among the eligible candidates on the basis of merit and ability, seniority being a consideration only when all the qualifications are equal.

7. While admitting that respondent No.3 had relinquished promotion for one year due to personal reasons, it is contended by respondent No.1 that he was allowed to join duty as Reader immediately when the period of one year was over, as requested by him. As on the date when the order of promotion of respondent No.3 was issued, petitioner had not become eligible for promotion since her probation as Lecturer had not been declared. It is further contended that respondent No.3 had not lost his seniority in the feeder category of Lecturer for the simple reason that he had relinquished promotion to the cadre of Reader.

8. Respondent No.3 has contended in his counter affidavit that when the post of Reader was created as per G.O(Ms)27/2005 dated February 2, 2005, the petitioner was not eligible for promotion. Her probation as Lecturer was declared only in January 2006 whereas respondent No.3 had successfully completed his probation in the cadre of Lecturer on August 7, 1998 and thus he had become eligible for promotion as Reader . Respondent No.3 was included in Ext.P2 select list in the year 2005 for promotion as Reader. He has also produced Ext.R3(f) order issued by the Government ratifying the action of the Principal allowing him to join duty as Reader provisionally, subject to the orders of the Government.

9. It is pertinent to note that respondent No.3 had raised a specific contention that petitioner was not entitled to claim seniority over him since he had not lost his seniority for the reason that he had relinquished promotion as Reader when it was offered to him in the year 2005. A further contention had also been raised that petitioner was not entitled to challenge Ext.P7 in this writ petition since such a challenge had not been accepted by this Court in Ext.P10 judgment.

Petitioner had also not responded to the contention raised by respondent No.3 that petitioner had availed of leave without allowances for a considerably long period between 1993 and 2002 and therefore she could not have claimed that she had sufficient teaching experience to claim promotion.

10. Having regard to the entire facts and circumstances I am of the view that petitioner has to wait till her turn arises for promotion to the post of Reader, subject to satisfaction of the criteria fixed for selection. Petitioner could not have aspired for promotion against the vacancy created in the year 2005. Respondent No.3 was appointed against that vacancy since at that time he was qualified and eligible for promotion. He was admittedly senior to the petitioner. More importantly, petitioner became eligible to be considered for promotion only after declaration of her probation in January 2006 and that too only subject to satisfaction of other criteria.

11. The contention raised by the petitioner that respondent No.3 could not have been allowed to assume charge as Reader after about one year cannot also be sustained, since no other senior and eligible

candidate was available for promotion. As mentioned earlier, the post of Reader is a selection post. Petitioner was on leave for nearly nine years and obviously therefore her probation in the post of Lecturer was declared only in 2006. Respondent No.3 had not lost his seniority in the meanwhile for the mere reason that he had relinquished promotion when it was offered to him initially. The contentions raised by the petitioner are wholly untenable. Therefore petitioner cannot be granted any relief in this writ petition. However it will be open to the petitioner to approach the authority concerned seeking promotion as and when the next vacancy arises.

Writ Petition is disposed of in the above terms.

A.K. Basheer
Judge.

an.